IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

MFA.No. 1260 of 2001(B)

O.P(MV).NO.2539/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, VADAKARA
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APPELLANT/ PETITIONER:

V.K. KANIYAN, AGED 48 YEARS,
S/O. VEMBIRA, VANNATHIKANDI HOUSE,
P.O. MUTHUKAD, VIA. PERUMANNAMOOZHI,
KOZHIKODE DIST.

BY ADV. SRI.JACOB ABRAHAM.

RESPONDENTS/ RESPONDENTS 1 & 3:
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1. **M. SREENIVASAN, AGED NOT KNOWN,**
   S/O. KUMARAN, SURABHI, KOLLAM,
   KOYILANDY, KOZHIKODE DIST.

2. **THE BRANCH MANAGER,**
   UNITED INDIA INSURANCE CO. LTD.,
   BRANCH OFFICE, P.B. NO. 17, KALLINGAL BUILDINGS,
   3RD FLOOR, MAIN ROAD, BADAGARA,
   KOZHIKODE DIST.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTIL,SC INSURANCE.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.1260 OF 2001

Dated 12th November, 2007

JUDGMENT

Koshy,J.

Appellant while standing by the side of a road, a bus bearing registration No.KL-11-4896 knocked down him on 28.3.95. The bus ran over both legs of the appellant. He sustained multiple injuries including compound fracture both bones right leg, crush injury on the left foot and fracture medial mallelous left. He was in medical college hospital from 28.3.1995 to 14.6.1995. He was again admitted in the hospital from 4.7.1997 to 20.10.1997 and thereafter from 26.7.1998 to 13.9.1998. He applied for compensation claiming an amount of Rs.8,00,000/=. The Tribunal has awarded a compensation of Rs.1,02,800/=. Only quantum of compensation is disputed in this appeal. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the second respondent insurance company and insurance company was directed to deposit the amount ordered.

2. According to the claimant, he was earning Rs.3,000/= per month and he was a mason by profession. Tribunal fixed only Rs.1,500/= as monthly wages. He was aged 49 and maintaining a family. We are of the opinion that being a mason he may earn more than Rs.100/= per day. He

claimed only Rs.3,000/= per month, but, there is no evidence regarding the actual earnings. Anyway, he was maintaining a family. Considering the wages of a mason in 1995, we are of the opinion that at least Rs.2,500/= could be fixed as the monthly income. Disability certificate assessing disability at 15% was accepted by the Tribunal. The above disability certificate (Ext.X1) was issued by the medical board. Tribunal has taken 13 as the multiplier. We see no ground to enhance the above multiplier. Therefore, compensation payable for 15% disability will be Rs.58,500/= (Rs.2,500 x 12 x $\frac{15}{100}$ x 13). The Tribunal has granted only Rs.35,100/= taking Rs.1,500/= as the monthly income. So, he will be entitled to an additional amount of Rs.23,400/= towards disability and loss of earning capacity. Ext.A7 is the treatment certificate. His injuries were proved by wound certificate. Ext.A4 Name Index Card, Ext.A5 series of referral O.P. Tickets and Ext.A6 admission/discharge book would show that there was non-union of fracture tibia bilateral and he had to continue treatment. He was in plaster caste for many times. The above certificates would show that he was treated as inpatient for 187 days in the hospital and he was under treatment for three and a half years as repeated plaster caste has to be done in view of the non-union of

bones. But, for loss of actual earnings for the period of treatment only Rs.6,000/= was given by the Tribunal. Even if we have taken Rs.2,500/= as monthly income, he was in hospital for more than six months and in plaster caste for about three years and four months. Taking these, we are of the opinion that at least Rs.50,000/= should be awarded to him for the actual loss of earnings for the period under treatment as he was not able to do nay work and he was in plaster caste for more than three and a half years. Even now fractures are not united. Therefore, he will be entitled to an additional amount of Rs.44,000/= under that count. It is stated that he was staying in Perumannamoozhi which is about 60 kmts. away from the hospital. He was given only Rs.400/= for transportation charges. We are of the opinion that another Rs.1,600/= ought to have been granted for transportation charges. It is submitted that the amount awarded for treatment expenses and future treatment expenses is very low. Only actual medical expenses covered by bill were reimbursed. For treatment in the hospital, there would be a lot of expenses which are not covered by bills. Hence, we award Rs.1,000/= more on that count. Thus additional compensation payable will be Rs.70,000/=. The above amount of Rs.70,000/= should be deposited by the second respondent insurance company with 7.5% interest from the date of

application till its deposit, over and above the decreed amount by the Tribunal. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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